

TO: Rural Development State Directors

Rural Development Managers, and
Community Development Managers

FROM: James C. Alsop (Signed by James C. Alsop)
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SUBJECT: Guidelines for Submitting Debarment and Suspension Requests to the
National Office

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) provides clarifications to State, Area and Local offices for use when a nonprocurement suspension and proposed debarment action is recommended and submitted to the National Office.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 3858 (1940-M), which expired May 31, 2004.

IMPLEMENTATION RESPONSIBILITIES:

This AN provides guidance for preparation of the debarment case file for submission to the Administrator of the appropriate Agency, Attention: Program Support Staff.

EXPIRATION DATE: July 31, 2005

FILING INSTRUCTIONS:
Preceding RD Instruction 1940-M

Due to the potentially serious consequences resulting from a suspension or debarment action and the possibility of a challenge to the Agency action, it is important that all recommendations for these actions be fully supported with documentation. If the Administrator has access to all relevant information during the decision making process, and this information is contained in the appropriate files, the Agency will be more likely to withstand any challenge of its decision to impose suspension or debarment.

Particular attention should be paid to RD Instruction 1940-M, Exhibit A, 7 C.F.R. part 3017 subpart H, section 3017.800 when listing the causes for debarment. All recommendations must be supported with documentation justifying the request. The materials submitted to the Program Support Staff (PSS), plus documents submitted by the respondents during the administrative process will comprise part of the administrative record. The quality and accuracy of this narrative record can ultimately determine the success or failure of a case if the case is appealed to an Administrative Law Judge.

In order for the Agency to be successful in its debarment and suspension actions, the case must be fully documented. The Agency must include all documents relating to the relationship between the debarment target and the Agency. These includes, but is not limited to, mortgages, notes, and management or partnership agreements. Our recent experiences suggest that we should exercise care in identifying the correct person or entity to be debarred so we will not lose on procedural error for failure to provide proper and timely notice to the right person or entity.

When the debarment may extend to partners or affiliates, any partnership agreements or articles of incorporation must be included to establish relationships between the parties. These documents are necessary to assist in correctly identifying the person or entity to be debarred, making determinations about imputing actions to other individuals and debaring affiliates. The debarment case file (a four-position folder) must contain the following documentation in the order as listed:

POSITION 1 & 2

(National Office Is Responsible For Position Numbers 1 & 2)

POSITION 3

Documentary Evidence From The State Office In
Chronological Order With The Most Recent
Documents On Top

- State Director's recommendation, to the Agency Administrator, of the action to be taken, including the recommended period for debarment, suspension or proposed debarment.
- Regional Attorney's memorandum including their concurrence and the reasons for concurrence in the causes (i.e. specific citations under § 3017.800), including any problems they may foresee.

- State Office request for review by Regional Attorney, including the name of all individuals and entities, current addresses for each, specific cause(s) for debarment (merely stating see § 3017.800 (a) alone without a detailed and specific analysis is not enough) and a suggested and justified time period of debarment (see § 3017.865).
- Transmittal memorandums from the Local and Area Office.
- Executive Summary, consisting of a brief history and background of events and the specific act(s) that was responsible for the debarment recommendation.
- Clear, cogent, and concise narrative setting out each person or entity to be debarred, the specific causes for debarment, the specific actions which give rise to each specific cause for debarment, an explanation as to why and how the specific action is a cause for debarment, (i.e., violation of Builders Warranty, Loan Note Guarantee, etc.) and any weak points or extenuating circumstances which may be involved. Specific citations of each regulation at issue must be included.
- Include the following documents that are applicable plus any additional information that will support the State Office's recommendation and assist the Administrator in the decision making process:
 - Agency letters to the respondents and their responses;
 - Borrower complaint letters to respondents and their responses;
 - Copies of any articles of incorporation, loan agreements, bylaws or partnership agreements;
 - Record of other Agency contacts with respondents (including printouts of relevant global notes from FASTeller, if applicable);
 - Record of visits and copies of running record entries;
 - Inspections/Certifications;
 - Criminal indictments, Judgments, Settlements, and Plea Bargain Agreements;

- Construction Matters:

Contract and all written Agreements
Subcontracts
Amendments and Change Orders
Plans and Specifications
Warranty Documents
Payment Information
Release of Claims, Lien Waivers
Mechanics or Suppliers Liens and Judgments

- Application Matters

Application
Verification of Employment
Interest Credit or Subsidy Repayment Agreements
Conditional Commitment

POSITION 4

OIG and Other Investigation Reports

If you have any questions concerning these issues or the debarment and suspension regulations, please contact Tom Dickson of the Program Support Staff by calling (202) 690-4492.